



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 20, 2021

Ms. Alice Holloway  
City Secretary  
City of Joshua  
101 South Main Street  
Joshua, Texas 76058

OR2021-22770

Dear Ms. Holloway:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 901309.

The City of Joshua (the "city") received a request for information pertaining to specified elections. The city indicates it will withhold information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> The [] states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.117 and 552.1175 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information is subject to section 1.012 of the Election Code, which provides, in relevant part, the following:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

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<sup>1</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

(c) Except as otherwise provided by [the Election Code] or [the Act], all election records are public information.

(d) In this code, “election record” includes:

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(3). In addition, section 141.035 of the Election Code provides, “[a]n application for a place on [an election] ballot . . . is public information immediately on its filing.” *Id.* § 141.035. Thus, under section 1.012(a), the submitted information constitutes “election records” and the city must make it available to the public, except as provided by the Act. Accordingly, we will address the city’s arguments against disclosure of the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>2</sup> *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The city must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of specified categories of individuals. *See Gov’t Code* § 552.117. However, section 552.117 applies only to records that a governmental body holds in an employment capacity. As previously noted, the information at issue constitutes election records the city maintains in accordance with the Election Code, not employment records. Therefore, the city may not withhold any of the submitted information under section 552.117 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *Id.* § 552.1175. Section 552.1175 applies, in part, to an elected public officer.

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

Act of May 10, 2021, 87th Leg., R.S., H.B. 1082, § 2 (to be codified at Gov't Code § 552.1175(a)(17)). The city asserts some of the remaining information it has marked pertains to elected public officers and is held by the city in a non-employment capacity. Therefore, the city must withhold the remaining information it has marked under section 552.1175 of the Government Code if the individuals at issue are elected public officers and elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code.

In summary, the city must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the remaining information it has marked under section 552.1175 of the Government Code if the individuals at issue are elected public officers and elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The city must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jm

Ref: ID# 901309

Enc. Submitted documents

c: Requestor  
(w/o enclosures)